

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE SONUS NETWORKS, INC.  
LITIGATION

) Civil Action No. 04-10294-DPW  
) (Lead Case)  
)  
)

THIS DOCUMENT RELATES TO:  
ALL CASES

) **DECLARATION OF JOHN F.**  
) **MYKLUSCH IN SUPPORT OF**  
) **BPI GLOBAL ASSET**  
) **MANAGEMENT LLP'S MOTION**  
) **FOR CLASS CERTIFICATION**  
)  
)

I, John F. Myklusch, declare as follows:

1. I am presently the Chief Financial Officer and Chief Compliance Officer of Trilogy Global Advisors, LLC. I submit this declaration in support of BPI Global Asset Management LLP's motion for class certification. The matters stated herein are true of my own personal knowledge and if called to testify thereto, I could and would competently do so.

2. Exhibit A hereto is a true and correct copy of the certificate of formation of Trilogy Global Advisors, LLC filed with the Secretary of State of the State of Delaware on May 26, 2005.

3. Exhibit B hereto is a true and correct copy of the certificate of formation of BPI Global Asset Management LLC filed with the Secretary of State of the State of Delaware on May 27, 2005.

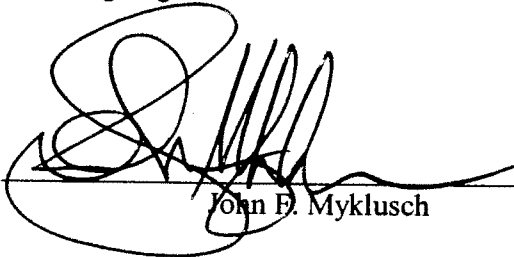
4. Exhibit C hereto is a true and correct copy of the certificate of conversion of BPI Global Asset Management LLP to BPI Global Asset Management LLC filed with the Secretary of State of the State of Delaware on May 31, 2005.

5. Exhibit D hereto is a true and correct copy of the certificate of merger of Trilogy Advisors, LLC with and into Trilogy Global Advisors, LLC filed with the Secretary of State of the State of Delaware on January 3, 2006.

6. Exhibit E hereto is a true and correct copy of the certificate of merger of BPI Global Asset Management LLC with and into Trilogy Global Advisors, LLC filed with the Secretary of State of the State of Delaware on March 31, 2006.

7. Exhibit F hereto is a true and correct copy of the Agreement and Plan of Merger between Trilogy Global Advisors, LLC and BPI Global Asset Management LLC dated March 31, 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 2, 2007.



John F. Myklusch

# **EXHIBIT A**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "TRILOGY GLOBAL ADVISORS, LLC", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF MAY, A.D. 2005, AT 5:32 O'CLOCK P.M.

3939904 8100

050440936



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3909936

DATE: 05-27-05

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:32 PM 05/26/2005  
FILED 05:32 PM 05/26/2005  
SRV 050440936 - 3939904 FILE

CERTIFICATE OF FORMATION

OF

TRILOGY GLOBAL ADVISORS, LLC

This Certificate of Formation of Trilogy Global Advisors, LLC (the "Company"), dated as of May 26, 2005, is being duly executed and filed by Gregory J. Gigliotti as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. Code §§18-101 et seq.).

FIRST: The name of the limited liability company formed is:

Trilogy Global Advisors, LLC

SECOND: The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

THIRD: The name and address of the registered agent for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/ Gregory J. Gigliotti  
Gregory J. Gigliotti  
Authorized Person

# **EXHIBIT B**

# Delaware

PAGE 2

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BPI GLOBAL ASSET MANAGEMENT LLC" FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF MAY, A.D. 2005, AT 2:38 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF FORMATION IS THE THIRTY-FIRST DAY OF MAY, A.D. 2005.

3048270 8100V

050445607



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3911979

DATE: 05-27-05

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:38 PM 05/27/2005  
FILED 02:38 PM 05/27/2005  
SRV 050445607 - 3048270 FILE

**CERTIFICATE OF FORMATION**  
**OF**  
**BPI GLOBAL ASSET MANAGEMENT LLC**

1. The name of the limited liability company is BPI Global Asset Management LLC.
2. The address of its registered office in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19804. The name of the Limited Liability Company's registered agent for service of process in the State of Delaware at such address is Corporation Service Company.
3. This Certificate of Formation shall be effective on May 31, 2005.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of BPI Global Asset Management LLC this 26th day of May, 2005.

By: \_\_\_\_\_

Ryan A. Suroow

4249900\_v1



# **EXHIBIT C**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE LIMITED LIABILITY PARTNERSHIP UNDER THE NAME OF "BPI GLOBAL ASSET MANAGEMENT LLP" TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "BPI GLOBAL ASSET MANAGEMENT LLP" TO "BPI GLOBAL ASSET MANAGEMENT LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF MAY, A.D. 2005, AT 2:38 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CONVERSION IS THE THIRTY-FIRST DAY OF MAY, A.D. 2005.

3048270 8100V

050445607



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3911979

DATE: 05-27-05

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:38 PM 05/27/2005  
FILED 02:38 PM 05/27/2005  
SRV 050445607 - 3048270 FILE

**STATE OF DELAWARE  
CERTIFICATE OF CONVERSION  
FROM A LIMITED LIABILITY PARTNERSHIP TO A LIMITED  
LIABILITY COMPANY PURSUANT TO SECTION  
18-214 OF THE LIMITED LIABILITY COMPANY ACT**

- 1.) The jurisdiction where the Limited Liability Partnership was first formed is Delaware.
- 2.) The date the Limited Liability Partnership was first formed is May 26, 1999.
- 3.) The name of the Limited Liability Partnership immediately prior to filing this Certificate is BPI Global Asset Management LLP.
- 4.) The name of the Limited Liability Company as set forth in the Certificate of Formation is BPI Global Asset Management LLC.
- 5.) This Certificate of Conversion shall be effective on May 31, 2005.

By: \_\_\_\_\_

Ryan E. Burrow

# **EXHIBIT D**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"TRILOGY ADVISORS, LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "TRILOGY GLOBAL ADVISORS, LLC" UNDER THE NAME OF "TRILOGY GLOBAL ADVISORS, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF JANUARY, A.D. 2006, AT 11:31 O'CLOCK A.M.



3939904 8100M

060001110

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4420673

DATE: 01-04-06

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:56 AM 01/03/2006  
FILED 11:31 AM 01/03/2006  
SRV 060001110 - 3939904 FILE

**CERTIFICATE OF MERGER**

**OF**

**TRILOGY ADVISORS, LLC**

**(a Delaware limited liability company)**

**AND**

**TRILOGY GLOBAL ADVISORS, LLC**

**(a Delaware limited liability company)**

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Company Act.

1. The name of the surviving limited liability company is Trilogy Global Advisors, LLC, a Delaware limited liability company.

2. The name of the limited liability company being merged into this surviving limited liability company is Trilogy Advisors, LLC. The jurisdiction in which this limited liability company was formed is the State of Delaware.

3. The Agreement and Plan of Merger has been approved and executed by both the constituent limited liability companies.

4. The name of the surviving limited liability company is Trilogy Global Advisors, LLC.

5. The executed Agreement and Plan of Merger is on file at the offices of Trilogy Global Advisors, LLC, 1114 Avenue of the Americas, 28<sup>th</sup> Floor, New York, NY 10036, the principal place of business of the surviving limited liability company.

6. A copy of the Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the limited liability company or any person holding an interest in any other business entity which is to merge or consolidate.

IN WITNESS WHEREOF, said limited liability company has caused this certificate to be signed by an authorized person, this 31<sup>st</sup> day of December, 2005

TRILOGY GLOBAL ADVISORS, LLC

By: 

Name: William Sterling

Title: CEO

# **EXHIBIT E**



# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"BPI GLOBAL ASSET MANAGEMENT LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "TRILOGY GLOBAL ADVISORS, LLC" UNDER THE NAME OF "TRILOGY GLOBAL ADVISORS, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTY-FIRST DAY OF MARCH, A.D. 2006, AT 4:48 O'CLOCK P.M.

3939904 8100M

060308690



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4639723

DATE: 04-03-06

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:10 PM 03/31/2006  
FILED 04:48 PM 03/31/2006  
SRV 060308690 - 3939904 FILE

**CERTIFICATE OF MERGER**

**OF**

**BPI GLOBAL ASSET MANAGEMENT LLC**

**(a Delaware limited liability company)**

**AND**

**TRILOGY GLOBAL ADVISORS, LLC**

**(a Delaware limited liability company)**

**Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Company Act.**

**1. The name of the surviving limited liability company is Trilogy Global Advisors, LLC, a Delaware limited liability company.**

**2. The name of the limited liability company being merged into this surviving limited liability company is BPI Global Asset Management LLC. The jurisdiction in which this limited liability company was formed is the State of Delaware.**

**3. The Agreement and Plan of Merger has been approved and executed by both the constituent limited liability companies.**

**4. The name of the surviving limited liability company is Trilogy Global Advisors, LLC.**

**5. The executed Agreement and Plan of Merger is on file at the offices of Trilogy Global Advisors, LLC, 1114 Avenue of the Americas, 28<sup>th</sup> Floor, New York, NY 10036, the principal place of business of the surviving limited liability company.**

**6. A copy of the Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the limited liability company or any person holding an interest in any other business entity which is to merge or consolidate.**

IN WITNESS WHEREOF, said limited liability company has caused this certificate to be signed by an authorized person, this 31st day of March, 2006.

TRILOGY GLOBAL ADVISORS, LLC

By: /s/ John Myklusch  
Name: John Myklusch  
Title: Chief Financial Officer

# **EXHIBIT F**

### AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement") is made as of March 31, 2006, between Trilogy Global Advisors, LLC, a Delaware limited liability company, and BPI Global Asset Management LLC, a Delaware limited liability company, in accordance with Section 18-209 of the Limited Liability Company Act of the State of Delaware.

#### WITNESSETH:

WHEREAS, Trilogy Global Advisors, LLC, a Delaware limited liability company ("Trilogy Global"), is the sole member of BPI Global Asset Management LLC ("BPI");

WHEREAS, the Board of Managers of Trilogy Global and the members holding at least 70% of the outstanding units of Trilogy Global, desire to merge BPI with and into Trilogy Global pursuant to the terms and conditions of this Agreement (the "Merger") and have adopted a resolution approving this Agreement; and

WHEREAS, Trilogy Global, in its capacity as the sole member of BPI, has adopted a resolution approving this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Trilogy Global and BPI hereby agree as follows:

#### Section 1. General.

- 1.1. The Merger. At the Effective Time (as defined in this Section 1) of the Merger, BPI (the "Non-Surviving LLC") shall be merged with and into Trilogy Global, the separate existence of Non-Surviving LLC shall cease and Trilogy Global shall continue as the surviving limited liability company (the "Surviving LLC").
- 1.2. Name of Surviving LLC. The name of the Surviving LLC shall be Trilogy Global Advisors, LLC.
- 1.3. Limited Liability Company Agreement of Surviving LLC. At the Effective Time, automatically and without any further action, the Limited Liability Company Agreement of Trilogy Global Advisors, LLC shall be the Limited Liability Company Agreement of the Surviving LLC.
- 1.4. Member of Surviving LLC. From and after the Effective Time, the members of Trilogy Global Advisors LLC shall continue as the member of the Surviving LLC, subject to the provisions of the Amended and Restated Limited Liability Company Agreement of the Surviving LLC.
- 1.5. Property and Liabilities of the Non-Surviving LLC. At the Effective Time, the separate existence of the Non-Surviving LLC shall cease and the Surviving LLC shall, from and after the Effective Time, possess all the rights, privileges, powers and franchises of whatsoever nature and description, of a public as well as a

private nature, of the Non-Surviving LLC and be subject to all restrictions, liabilities and duties of the Non-Surviving LLC; all rights, privileges, powers and franchises of the Non-Surviving LLC, all property, real, personal and mixed, of and debts due to the Non-Surviving LLC on whatever account including subscriptions and all other things in action or belonging to the Non-Surviving LLC shall be vested in the Surviving LLC; and all property, rights, privileges, powers, franchises and all other interests of the Non-Surviving LLC shall be thereafter as effectually the property of the Surviving LLC as they were of the Non-Surviving LLC and the title to any real estate vested by deed or otherwise in the Non-Surviving LLC shall not revert or be in any way impaired by reason of the Merger. All rights of creditors and all liens upon the property of the Non-Surviving LLC shall be preserved unimpaired and all debts, liabilities and duties of the Non-Surviving LLC shall thenceforth attach to the Surviving LLC and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Any claim existing or action or proceeding, whether civil, criminal or administrative, pending by or against any of the Non-Surviving LLC may be prosecuted to judgment or decree as if the Merger had not taken place, or the Surviving LLC may be substituted in such action or proceeding.

- 1.6. Further Assurances. BPI agrees that at any time, or from time to time, as and when requested by the Surviving LLC, or by its successors or assigns, it will execute and deliver or cause to be executed and delivered in its name by its last acting officers, or by the corresponding officers of the Surviving LLC, all such conveyances, assignments, transfers, deeds or other instruments and will take or cause to be taken such further or other action as the Surviving LLC, or its successors or assigns, may deem necessary or desirable in order to evidence the transfer, vesting or devolution of any property, right, privilege or franchise or to vest or perfect in or confirm to the Surviving LLC, or its successors or assigns, title to and possession of all the property, rights, privileges, powers, franchises and interests referred to in this Section 1 and otherwise to carry out the intent and purposes hereof.
- 1.7. Effective Time. This Agreement shall become effective upon the filing of a certificate of merger with the Secretary of State of the State of Delaware (the "Effective Time").

## Section 2. Treatment of Securities.

- 2.1. Merger. As of the Effective Time, automatically and without further action, all membership interests of BPI shall be canceled without consideration.

## Section 3. Miscellaneous.

- 3.1. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

TRILOGY GLOBAL ADVISORS, LLC

By: 

Name: John Myklusch  
Title: CFO

BPI GLOBAL ASSET MANAGMENT LLC

By: 

Name: John Myklusch  
Title: CFO